

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK

JULY 24 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

SHANE ROBERT ESTILLORE,

Appellant.

2 CA-CR 2007-0109

DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 111, Rules of
the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061725

Honorable Gus Aragón, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

E C K E R S T R O M, Presiding Judge.

¶1 Twelve jurors found appellant Shane Estillore guilty of aggravated assault with a deadly weapon and drive-by shooting, both dangerous-nature offenses committed in the presence of an accomplice. The state eventually dismissed two other charges of attempted

first-degree murder and possession of a deadly weapon by a prohibited possessor. The trial court sentenced Estillore to prison for concurrent, presumptive terms of 10.5 and 7.5 years and ordered him to pay restitution of \$5,212.57 to the victim.

¶2 Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Counsel has complied with *Clark* by “setting forth a detailed factual and procedural history of the case with citations to the record, [so that] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” *Id.* ¶ 32. Stating she has reviewed the record without finding an “arguable question of law” to raise on appeal, counsel asks this court to search the record for fundamental error. Estillore has not filed a supplemental brief.

¶3 Although squarely presenting no issues, counsel states that “[c]ertain action taken by the trial court may provide the appearance of an arguable issue.” Specifically, counsel suggests the court may have abused its discretion by refusing to give a jury instruction Estillore requested on the defense theory of the case—namely, that the victim had been shot not by Estillore but by Maurice Webb, the driver of the car in which Estillore was riding as a passenger. Because counsel has neither quoted the requested instruction nor directed us to its location in the record on appeal, *see* Ariz. R. Crim. P. 31.13(c)(1)(iv) and (vi), and because we have not found it, we have no basis for saying the trial court abused its discretion in refusing the instruction as it may have been worded.

¶4 The record contains reasonable evidence establishing each element of the two offenses of which Estillore was convicted, and our search of the record for fundamental error pursuant to *Anders* has disclosed none. We therefore affirm Estillore’s convictions and sentences.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge